



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 19, 2004

Mr. Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2004-8876

Dear Mr. Aragón:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211476.

The Texas Health and Human Services Commission (the "commission") received a request for "community questionnaires concerning [Child Protective Services ("CPS")] that have been collected by the Office of Inspector General ["OIG"] since July 2, 2004." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 531.1021 of the Government Code provides in relevant part as follows:

(g) All information and materials subpoenaed or compiled by the office [of inspector general] in connection with an investigation are confidential and not subject to disclosure under Chapter 552, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the office [of inspector general] or its employees or agents

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

involved in the investigation conducted by the office, except that this information may be disclosed to the office of the attorney general and law enforcement agencies.

You explain that the OIG was created "to prevent, detect and investigate fraud, abuse and waste in state health and human service programs." Further, you state that "[o]n July 2, 2004, Health and Human Services Executive Commissioner Albert Hawkins ordered a full and immediate investigation of CPS programs, which are managed by the Department of Family Protective Services." Finally, you represent that the responsive information was compiled by the OIG in connection with this pending investigation. Upon review, we find that the responsive information is confidential under section 531.1021(g) and must be withheld under section 552.101 of the Government Code.

Next, you ask this office to issue a previous determination authorizing the commission to withhold all information and materials compiled by the OIG in connection with its investigations under section 552.101 of the Government Code in conjunction with section 531.1021(g) of the Government Code. After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) that the commission must withhold all information and materials compiled by the OIG in connection with OIG investigations under section 552.101 of the Government Code in conjunction with section 531.1021(g) of the Government Code, except that this information may be disclosed to the office of the attorney general and law enforcement agencies. *See* Gov't Code § 531.1021(g); *see also* Gov't Code § 552.301(a), (f); *see also* Open Records Decision No. 673 (2001). Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the commission need not ask for a decision from this office again with respect to this type of information requested of the commission under Chapter 552 of the Government Code. *Id.*

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/krl

Ref: ID# 211476

Enc: Submitted documents

c: Ms. Polly Ross Hughes
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(w/o enclosures)